

(1935) 10 MAD CK 0025
In the Madras High Court

Gudur Manga Reddi

APPELLANT

Vs

P. Venkataraghava Ayyangar alias P.V. Raghavan

RESPONDENT

Date of Decision : 29-10-1935

Acts Referred:

Citation : AIR 1936 Mad 250 : (1936) 43 LW 429 : (1936) 70 MLJ 255

Hon'ble Judges : Venkataramana Rao, J

Bench : Division Bench

Judgement

Venkataramana Rao, J.—This second appeal raises a question of limitation. The plaintiff who is a Shrotriendard seeks to recover a sum of

Rs. 9-10-11 as and for damages from the defendant who is his tenant for the unauthorized use of the shrotriend tank water His case is that under

the terms of a muchilika executed in his favour the defendant shall raise second crop on lands that are fit for the second crop and pay half the

assessment therefor and therefore he can utilise the tank water only for the said purpose and any user other than that would be illegal and that the

defendant took water not for the second crop but for the purpose of watering the field to facilitate ploughing for the next season, and wasted the

water of the tank thereby causing loss and diminution of water supply to the second crops already planted by other ryots of the village. The finding

of the lower appellate Court is that

the defendants did not take water for the purpose of raising second crop. They are therefore liable to pay damages to the plaintiff for the use of

that water

2. The water was taken on 23rd March 1926 and the suit was filed on 25th March 1929. Is the suit in time? The plaintiff contends that he is, as

according to him the Article of Limitation Act applicable is 115 and the suit was filed within three years from the date when the defendant

committed breach of contract entered into by him. The defendant contends that the proper Article applicable is either Article 32 or 36. The action

cannot be viewed as one based on a breach of contract. The plaintiff is not trying to recover any compensation for the breach of an obligation of

the contract alleged to be broken. The plaintiff need not rely on the contract for the relief he claims. On the other hand, the defendant will have to

and does rely on the contract stating that what he has done is covered by the contract. The basis of an action founded on a breach of contract and

that founded on a tort is not the same. As Street in his "Foundation of Legal Liability, Vol. 3 Introduction XV points out

the word "contract" indicates the source from which the obligation to :act is derived while the word "tort" is used to indicate the wrongful act upon

which liability is predicated

3. The action in this case is one in tort because the wrongful act complained of is the illegal use of water. The defendant has no right to use the

water without the consent of the landlord and he can do so under the muchilika only for the second crop. In"" regard to any other user he would be

a trespasser. Vide Venkata Rangayya Appa Row v. Jagannadham (1910) 8 M.L.T. 279 Article 32 would not apply as there is no perversion of

the land within the meaning of the Article. ArticleS 48 and 49 would obviously not apply. Therefore Article 36 must govern the case. As explained

in Kirpa Ram v. Kunwar Bahadur I.L.R.(1932) 54 All. 467

refers to action which may be on account of the commission of some act which is in itself unlawful, or being the improper performance of some law

fill act, or the omission of some act which a person by law is bound to do. ft is a genera) article for suits for compensation for all acts and omissions

amounting to torts which are not provided for elsewhere

4. The plaintiff's suit is therefore barred by limitation. I reverse the decree of the learned District Judge and dismiss the suit, but in the

circumstances I direct each party to bear his own costs thorough out. Leave refused.